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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,289	01/29/2004	Robert Louis DeAngelis	YOR920030577USI	4994

7590 10/19/2004

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EXAMINER
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SALDANO, LISA M

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/767,289	DEANGELIS, ROBERT LOUIS 	
	Examiner	Art Unit	
	Lisa M. Saldano	3673	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12, 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13 and 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- a. Species 1 as illustrated by Figure 1
- b. Species 2 as illustrated by Figure 4
- c. Species 3 as illustrated by Figure 6
- d. Species 4 as illustrated by Figure 9.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 3, 4, 13 and 16 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with George Willingham on October 5, 2004 a provisional election was made with traverse to prosecute the invention of Species 1, claims 2, 5-10, and 17-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11, 12, 14 and 15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### *Specification*

3. The disclosure is objected to because of the following informalities:

On page 6 of the specification, lines 14 and 20, the applicant uses different element numbers (40 and 42) to describe the attachment mechanism.

On page 7, lines 8-10, the specification discloses "at least one slot 48 and cavity 50," as illustrated in Fig.8 However, Fig.8 of the drawings fail to show these limitations.

On page 3, lines 5-16, the applicant fails to provide brief descriptions of the Figures 9-12.

Appropriate correction is required.

*Drawings*

4. The drawings are objected to under 37 CFR 1.83(a) because they fail to show “at least one slot 48 and cavity 50” in Fig.8 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to because “line 7-7” as described in the Brief Description of Figures is not shown as a section in Fig.6, though it is referred to in the description of Fig.7.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

6. Claims 1, 5, 8, 13 and 16-19 are objected to because of the following informalities:

Regarding claim 1, line 3, the applicant recites limitations directed to “the retainer.”

However, prior claim language recites a “retainer structure,” not a retainer.

Regarding claims 5, 8 and 18, the list of optional elements does not appear to be presented in proper Markush form.

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Regarding claim 13, line 2, the applicant recites limitations directed to “the remediation material.” However, prior claim language from which the claim depends claims one or more remediation materials. Please use consistent language for clarity.

Regarding claim 16, line 1, the applicant recites limitations directed to “the remediation material.” However, prior claim language from which the claim depends claims one or more remediation materials. Please use consistent language for clarity

Regarding claim 17, lines 3,4 and 10 the applicant recites limitations directed to “the retainer.” However, prior claim language recites a “retainer structure,” not a retainer.

Regarding claim 19, line 1, the applicant recites limitations directed to “the remediation material.” However, prior claim language from which the claim depends claims one or more remediation materials. Please use consistent language for clarity.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 1-10, 13 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dreyer (US2002/0172560).

Regarding claims 1 and 17, Dreyer discloses a floatation unit or retainer structure 12 and anchor assembly 44, 40, 42 attached to the retainer structure through curtain sleeve 16. The anchor assembly defines limits of the motion of the retainer structure in three dimensions. Dreyer further discloses an attachment mechanism comprising either stitches from sewing or a heat bond through heat fusion (see page 2, paragraph [0020]) whereby curtain member 14, typically made from oleophilic geosynthetic fabric, is secured to the retainer structure. Oleophilic geosynthetic fabric is a remediation material because it absorbs or attracts oil (see page 3, paragraph [0031]).

Regarding claims 2, 5 and 18, Dreyer discloses that the floatation unit or retainer structure 12 may comprise inflatable devices, air bags, and floats made from buoyant material such as cork, foams or other plastics (see page 4, paragraph [0044]).

Regarding claim 3 and 4, Dreyer discloses that the floatation unit or retainer structure 12 is selectively positionable in one of a plurality of shapes, the shape being a circular cross-sectional shape. Dreyer further discloses that the floatation unit or retainer structure 12 may comprise one or more lengths of buoyant material (see page 2, paragraph [0020]).

Regarding claims 6 and 17, Dreyer discloses that the anchor assembly comprises spoke members 44 and at least one tether element 42 whereby the spoke is attached to the retainer structure 12 via sleeve 16 and in contact with tether 42 at block anchor 40.

Regarding claims 7 and 8, Dreyer discloses that the spoke member 44 may be cables or wires, which are inherently flexible elements (see page 2, paragraph [0027]).



Regarding claim 9, Dreyer discloses that the anchors may be releasably or temporarily installed (see page 2, paragraph [0027]).

Regarding claim 10, Dreyer discloses that the tether elements may be cables or chains (see page 2, paragraph [0027]).

Regarding claim 13, Dreyer discloses an attachment mechanism comprising either stitches from sewing or a heat bond through heat fusion whereby curtain member 14 the retainer structure 12. When the attachment mechanism is a sewing stitch, the curtain member, which comprises remediation material, may be released through removal of stitches.

Regarding claims 16 and 19, Dreyer's Fig. 1 illustrates the curtain member 14, typically made from oleophilic geosynthetic fabric. The curtain 14 is formed into a tubular fabric structure at sleeve 16.

9. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Mattson (6,332,737).

Regarding claim 1, Mattson discloses a retainer structure comprising tube extensions 20,22, an anchor assembly 27 attached to the retainer structure and arranged to define the limits of motion of the retainer structure (see Figs.1&4). Mattson further discloses an attachment mechanism 34 that secures hydrocarbon absorbent sock 16. The hydrocarbon absorbent sock 16 is a remediation material.

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*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Elliot et al (6,521,122), Middleton et al (6,767,456), Dreyer (US2001/0048851) and Sharpless (6,368,499) disclose features that are pertinent to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lms

  
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